Supreme Court, U.S.

No. 93-1182

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In The Supreme Court Of The United States

OCTOBER TERM, 1993

RODERICK L. CUTRIGHT,

Petitioner,

v.

E. R. CARPENTER COMPANY, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

David R. Simonsen, Jr.
1600 Forest Avenue, Suite 110
Richmond, Virginia 23229
(804) 285-1337

Counsel of Record for Petitioner

LAWYERS PRINTING COMPANY 7th & Franklin Bldg Richmond,Virginia 23219 (804) 648-3664

QUESTION PRESENTED

WHETHER AN UNLAWFULLY DISCHARGED CAPTAIN IN THE UNITED STATES ARMY RESERVES WHO SEEKS ONLY MONEY DAMAGES AT LAW FOR HIS EMPLOYER'S VIOLATION OF THE VETERANS' REEMPLOYMENT RIGHTS ACT IS ENTITLED TO A JURY TRIAL.

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NO. _____

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Opinions Below

The decision of the Fourth Circuit is an unpublished per curiam opinion set forth in Appendix A at 1-9. The decision is reported in a table of unpublished decisions: 8 F.3d 817. The opinion is contained in unofficial reporters at 1993 U.S. App. LEXIS 27376; and 126 Lab. Cas. (CCH) ¶ 10,884.

The Order of the District Court that struck the jury is unpublished. Appendix B: 1-2. The District Court struck the jury on the stated ground that the Fourth Circuit's decision in Troy v. City of Hampton, 756 F.2d 1000 (4th Cir.)(en banc), cert. denied, 474 U.S. 864 (1985), required the District Court to grant Respondent Carpenter's motion to strike the jury.

Jurisdiction

The Fourth Circuit issued its decision in this action on October 21, 1993. Appendix A. This Petition is filed within ninety (90) days of October 21, 1993. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions

United States Constitution
Seventh Amendment

In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

Veterans' Reemployment Rights Act, 38 U.S.C. §4302[1]

If any employer, who is a private employer or a State or political subdivision thereof, fails or refuses to comply with the provisions of section [4301](a), (b)(1), or (b)(3), or [4304] of this title, the district court of the United States for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such

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[1]The only change in this section since Cutright's discharge in November, 1989 was renumbering. Section 4302 of Title 38 was formerly § 2022 of Title 38. See Pub.L. 102-568, § 506(a), (c)(1), October 29, 1992, 106 Stat, 4340, 4341.

provisions, specifically to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions. Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided for in such provisions, such United States attorney or official, if reasonably satisfied that the person applying is entitled to such benefits, shall appear and act as

attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof specifically to require such employer to comply with such provisions. No fees or court costs shall be taxed against any person who may apply for such benefits. In any such action only the employer shall be deemed a necessary respondent. No state statute of limitations shall apply to any proceedings under this chapter.

Statement of the Case

Petitioner Roderick L. Cutright ("Cutright") alleges that Respondent E.R. Carpenter Company, Inc. ("Carpenter") discharged him because of his service as a Captain in the United States Army Reserves, in

violation of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended ("Veterans' Reemployment Rights Act" or the "Act"), 38 U.S.C. § 4301 et seq.[2]

Carpenter hired Cutright as a Plant Engineer on March 28, 1988. Throughout his employment with Carpenter, Cutright was an officer in the United States Army Reserve, 80th Training Division. As an officer in the United States Army Reserves, Cutright received orders for training duty that required days of absence from his duties at Carpenter.

During 1989, Cutright's reserve training duty was "fragmented". "Fragmented" training

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[2]The District Court had jurisdiction of this action pursuant to 38 U.S.C. § 4302 and 28 U.S.C. § 1331; the Fourth Circuit had jurisdiction of Cutright's appeal pursuant to 28 U.S.C. § 1291. Pursuant to 28 U.S.C. § 1254(1), Cutright now petitions this Court for a writ of certiorari to review the decision of the Fourth Circuit.

required Cutright to miss days during normal work weeks on an intermittent basis, one or two days at a time. "Fragmented" training duty is different from the more common obligation of a reservist for a single two week period, apart from any weekend duty.

In this action, Cutright alleges that Carpenter refused to allow its Plant Engineer to miss days of work during work weeks because of this reserve duty. Consequently, Carpenter fired Cutright on November 2, 1989, a day between two periods of Cutright's training duty in late October and early November.

Filing an action pursuant to the Act, 38 U.S.C. § 4302, Cutright sought only money damages in compensation for his unlawful discharge.[3] In the first paragraph of his

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[3]Cutright later amended his Complaint, adding a claim of unlawful pay deductions. The

Complaint, Cutright expressly described his action as an "action for monetary damages at law".[4] In the prayer for relief, Cutright asked the District Court only for "monetary damages"; i.e., "the wages and benefits that Cutright has lost because of his unlawful discharge on November 2, 1989." Cutright requested neither reinstatement nor any other relief that constitutes a traditional or common law form of equitable relief.

Despite the nature of Cutright's action, the District Court, citing Troy v. City of

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Fourth Circuit affirmed the District Court's denial of Cutright's allegation of unlawful pay deductions.

[4]In effect, Cutright was attempting to exercise the right existing at common law in the 18th century to proceed at law for money damages for the type of wrong alleged in his Complaint. See Opinion of Fourth Circuit, Appendix A, at 7 n. 2: "These actions could have been brought in courts of law or equity, depending upon the relief sought."

Hampton, 756 F.2d 1000 (4th Cir.)(en banc), cert. denied, 474 U.S. 864 (1985), as controlling precedent, characterized Cutright's Complaint as seeking only "equitable" relief. Having found that all relief sought was "equitable", the District Court held inapplicable the constitutional right of jury trial set forth in the Seventh Amendment of the Constitution of the United States and struck Cutright's jury demand.

Proceeding to a bench trial, the District Court entered judgment for Carpenter. The District Court found as a matter of fact that Cutright failed to carry his burden of proof that: "but for the Reserve status which he enjoyed at the time, he would not have been fired."

Cutright appealed the District Court's striking of the jury to the United States

Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the District Court's striking of Cutright's jury demand, holding that Troy v. City of Hampton, 756 F.2d 1000 (4th Cir.)(en banc), cert. denied, 474 U.S. 864 (1985), established that any relief under the Veterans' Reemployment Rights Act was equitable relief for which no right of jury trial arose under the Seventh Amendment.

Cutright now petitions this Court for a writ of certiorari to review the holding of the Fourth Circuit that denied Cutright his constitutional right of jury trial on his claim for money damages at law.

Reasons for Allowance of Writ

Conflict Between Third and Fourth Circuits

This Court should review this case pursuant to Rule 10.1(a) of the Rules of this

Court, because the decision of the Fourth Circuit in this case, holding that all relief available under the Veterans' Reemployment Rights Act is "equitable" relief, conflicts with the decision of the Third Circuit in Gruca v. United States Steel Corp., 495 F.2d 1252 (3rd Cir. 1974). In Gruca v. United States Steel Corp., the Third Circuit stated in pertinent part:

> A veteran's arsenal of remedies under § 459 [the predecessor of 38 U.S.C. § 4301-02] is not limited solely to those which are equitable in nature. By its very terms § 459 provides the district court with power "to require . . . [the] employer to comply with . . . [certain provisions of the section] and to compensate such person for any loss of wages or benefits . . ." Thus, a veteran can seek legal or equitable relief, or both.

495 F.2d at 1257.

Conflict with Precedent of This Court

This Court also should review this case

pursuant to Rule 10.1(c) of the Rules of this Court, because the denial of Cutright's constitutional right of jury trial in a case seeking only money damages, the classic form of "legal" relief at common law, involves an important question of federal law and conflicts with applicable decisions of this Court. See Wooddell v. Electrical Workers 502 U.S. ___, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991); Teamsters Local 391 v. Terry, 494 U.S. 558, 110 S.Ct. 1339, 108 L.Ed.2d 519 (1990); Lytle v. Household Mfg., Inc., 494 U.S. 545, 110 S.Ct. 1331, 108 L.Ed. 504, (1990).

Cutright seeks only money damages in this action; he has never sought reinstatement or any other form of injunctive or declaratory relief. Consequently, this action is for "legal" relief and Cutright is entitled to a jury trial under the Seventh Amendment of the

Constitution.

The Seventh Amendment of the Constitution of the United States provides that:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

This Court analyzed the constitutional right to jury trial in a case asserting a statutory cause of action in Teamsters Local 391 v. Terry, 494 U.S. 558, 110 S. Ct. 1339, 108 L.Ed.2d 519 (1990), and Wooddell v. Electrical Workers, 502 U.S. ___, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991). In both Terry and Wooddell, this Court held that a plaintiff's right of jury trial under the Seventh Amendment depends on the nature of the action and the form of relief sought. See, e.g.,

Teamsters Local 391 v. Terry, 494 U.S. 558, 565, 110 S. Ct. 1339, 1345, 108 L.Ed.2d 519, 528 (1990).

This Court further stated that the second factor, the form of relief sought, is the more important factor.[5] In other words, when the relief sought is of a form traditionally described as "legal", then the right of jury trial attaches. Money damages suffered and recoverable because of a wrongful act are

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[5]In Teamsters Local 391 v. Terry, four members of this Court joined in this opinion of Justice Marshall. Justice Brennan, concurring, opined that the nature of the relief sought was the only relevant factor. 494 U.S. at 574-81, 110 S.Ct. at 1349-53, 108 L.Ed.2d at 533-35. Justice Brennan further noted that the test stated by Justice Marshall would produce the same result as a test that looks only to the nature of the relief sought. 494 U.S. at 74-75, 110 S.Ct. at 1350, 108 L.Ed.2d at 534. Justice Stevens also concurred in the decision of the Court, but offered a different rationale. 494 U.S. at 581-84, 110 S.Ct. at 1353-55, 108 L.Ed.2d at 538-40.

traditionally described as "legal". Wooddell v. Electrical Workers, 502 U.S. ___, 112 S.Ct. 494, 498, 116 L.Ed.2d 419, 427 (1991). In this case, Cutright seeks only money damages for Carpenter's violation of the Act.

The fact that Cutright seeks money damages - legal relief - under a statute, rather than in a common law action, does not vitiate his constitutional right to trial by jury.

It is well established that the constitutional right to jury trial includes more than the common law forms of action recognized in 1791. The phrase "suits at common law" contained in the Seventh Amendment refers to "suits in which legal rights [are] to be ascertained and determined, in contradistinction to those where equitable rights alone [are] recognized, and equitable

remedies [are] administered." Teamsters Local 391 v. Terry, 494 U.S. 558, 564, 110 S. Ct. 1339, 108 L.Ed.2d 519, 527 (1990), citing Parsons v. Bedford, 28 U.S. 433, 447, 3 Pet. 433, 447 (1830).

This Court in Teamsters Local 391 v. Terry further analyzed the nature of the Seventh Amendment right of jury trial by comparing the particular statutory action to the 18th century actions brought in the courts of England before the merger of the courts of law and equity. When compared to 18th century legal actions, this action is most analogous to the common law action of indebitatus assumpsit. This is the common law action available to a discharged servant for compensation equivalent to back pay or lost wages. See Troy v. City of Hampton, 756 F.2d 1000, 1008 (4th Cir. 1985)(Ervin, J.,

dissenting). The existence of this common law analogy to an action for back pay or lost wages under the Act assists in establishing that Cutright has a jury trial right in this action. Id.

In determining the nature of the remedy sought, courts also have examined the particular language of the statutory statement of remedy. In this case, the pertinent statutory language is as follows:

> If any employer, who is a private employer . . . , fails or refuses to comply with the provisions of section [4301](a), (b)(1), or (b)(3), or section [4304] of this title, the district court of the United States. . ., shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, specifically to require such employer to comply with such provisions **and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action.** Any such

> compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions. [Emphasis added.]

38 U.S.C. § 4302. The use of the word "compensate" indicates the availability of legal relief in the form of compensatory damages. This statutory language indicates that Cutright is entitled to an award of monetary damages as compensation for any monetary damages that Cutright has suffered because of Carpenter's wrongful act. See Kolkhorst v. Tilghman, 897 F.2d 1282, 133 LRRM 2807, 2812 (4th Cir. 1990).

In Teamsters Local 391 v. Terry, 494 U.S. 558, 564-74, 110 S.Ct. 1339, 1344-49, 108 L.Ed.2d 519, 527-33 (1990), this Court established the importance of the distinction between a plaintiff seeking equitable relief, such as reinstatement, and legal relief, such

as lost wages. See also Smith v. Barton, 914 F.2d 1330, 1337 (9th Cir. 1990)(Rehabilitation Act); see generally Lytle v. Household Manufacturing, Inc., 494 U.S. 545, 110 S.Ct. 1331, 108 L.Ed. 2d 504, 52 FEP Cases (BNA) 423, 424 n. 1 (1990). The decision of the Fourth Circuit in this case denies this distinction and improperly denies Cutright his right of jury trial under the Seventh Amendment of the United States Constitution.

Conclusion

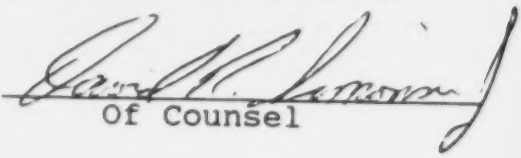
For the reasons stated in this Petition, Cutright asks that this Court grant his Petition, issue a writ of certiorari, and review the judgment of the United States Court of Appeals for the Fourth Circuit.

Cutright also asks for such other and further relief as is proper.

Dated this 18th day of January, 1994.

Respectfully submitted,

RODERICK L. CUTRIGHT

By: 
Of Counsel

David R. Simonsen, Jr.
1600 Forest Avenue, Suite 110
Richmond, Virginia 23229
(804) 285-1337

Counsel Of Record for Petitioner

Appendix A: 1

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

RODERICK L. CUTRIGHT,

Plaintiff-Appellant,

v. No. 92-1399

E. R. CARPENTER COMPANY, INCORPORATED,

Defendant-Appellee.

On Appeal from

The United States District Court

For the Eastern District of Virginia,

Richmond Division,

Judge James R. Spencer, District Judge

Submitted: March 19, 1993

Decided: October 21, 1993

Before WILKINSON, WILKINS, and NIEMEYER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL: David R. Simonsen, Jr., Richmond, Virginia, for Appellant; Eva S. Tashjian-Brown, Rodney A. Satterwhite, MCGUIRE, WOODS, BATTLE & BOOTHE, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in the Circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Roderick Cutright appeals from the district court's judgment in favor of Defendant E. R. Carpenter Company,

Inc. ("Carpenter") on claims for discriminatory discharge and salary deductions in violation of the Vietnam Veterans' Readjustment Assistance Act (the "Act"), 38 U.S.C.A. §§ 2021-2027 (West 1991 & Supp. 1992). Cutright contends that the district court erroneously denied his request for a jury trial and his claim for recovery of salary deductions by Carpenter for days Cutright spent out of work on military leave. Finding no error, we affirm the district court's judgment.

Cutright, a Captain in the United States Army Reserve, 80th Training Division, was hired as a Plant Engineer for Carpenter in March 1988. Cutright was a salaried employee, exempted for purposes of wage and hour laws, who routinely worked in excess of forty hours per week. Cutright's active duty with the 80th

Training Division required him to be away from work for two weeks in 1988, and four weekdays in 1989, May 10-12 and October 27. Cutright's employment was terminated on November 2, 1989.

Cutright sued Carpenter under the Act for lost wages and benefits, alleging that he was discharged because of his obligation as a member of the Army Reserve. After denying Cutright's request for a jury trial, the district court conducted a bench trial and found that Carpenter discharged Cutright for legitimate business reasons unrelated to his military reserve status. After the trial, Cutright moved to amend his complaint to include a claim for Carpenter's $511.32 deduction from his 1989 annual salary for the four days he was away on military leave in May and October of 1989. The court granted the motion to amend, but denied the claim for

recovery of unpaid wages.

"Claims under 38 U.S.C. § 2021 et seq. are equitable in nature and must be tried to the court." Troy v. Hampton, 756 F.2d 1000, 1003 (4th Cir.) (in banc), cert. denied, 474 U.S. 864 (1985). The Troy Court based its conclusion on the clear congressional intent that proceedings under the Act be governed by equitable principles,[1] the similitude of the Act's remedies to the equitable, restitutionary remedies provided under Title VII, 42 U.S.C. § 2000e-5(g) (1988), and the fact that the back pay remedy available under the Act "is discretionary with the district

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[1]"There is also added a provision at the end of this section which reaffirms and reflects more clearly the congressional intent that the legal proceedings under this chapter shall be governed by equitable principles of law . . . ." Troy, 756 F.2d at 1002 (quoting S. Rep. No. 93-907, 93rd Cong., 2d Sess. at 111-12) (emphasis omitted).

court and 'is an integral part of the equitable remedy of reinstatement.'" Id. at 1002 (quoting Smith v. Hampton Training School for Nurses, 360 F.2d 577, 581 n.8 (4th Cir. 1966)). The equitable nature of the remedy sought by Cutright's claim also precludes a jury trial under the more important second prong of the two-prong Seventh Amendment right to jury trial analysis.[2] Teamsters Local No.

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[2]The first prong, the nature of the issues involved, as determined by a comparison to actions recognized in 18th Century England before the merger of the courts of law and equity, is at best inconclusive as applied to this case. Cutright's claim for backpay based upon discriminatory acts by an employer may be closely analogized to an 18th Century tort action or an action to enforce an express or implied employment contract. These actions could have been brought in courts of law or equity, depending upon the relief sought. See, e.g., Hill v. Winn-Dixie Stores, Inc., 934 F.2d 1518, 1524 (11th Cir. 1991) (action for discrimination and constructive discharge resulting from plaintiff's jury duty); Smith v. Barton, 914 F.2d 1330, 1337 (9th Cir. 1990) (action for discriminatory discharge

391 v. Terry, 494 U.S. 558, 565 (1990). We find that the district court properly denied Cutright's request for a jury trial.

Cutright's claim for pay deductions for days missed due to military leave is also without merit, for an employer is not required to pay a reservist-employee for time missed from work. Monroe v. Standard Oil Co., 452 U.S. 549 (1981). The Act "does not entitle a reservist to benefits that are conditioned upon work requirements demanding actual performance on the job," id. at 553 n.7, because "Congress did not intend employers to provide special benefits to employee reservists not generally made available to other employees." Id. at 561.

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resulting from plaintiffs' physical handicaps), cert. denied, 59 U.S.L.W. 3837 (U.S. 1991).

The evidence presented at the bench trial showed that Cutright received $874 from the Army Reserves for on-duty time between May 10 and 12, 1989. That amount exceeds Cutright's total four-day claim by $383.49, and precludes a finding that Cutright actually suffered some loss of wages or benefits. See 38 U.S.C.A. § 2022 (district court can, in its discretion, "compensate [a reservist- employee] for any loss of wages or benefits suffered by reason of such employer's unlawful action."). We find that the Act was not intended to allow Cutright and similarly situated reservist-employees a special benefit unavailable to other employees, namely the opportunity to earn two salaries from two employers for one day of work. Hence, the district court's denial of Cutright's claim for recovery of pay deductions was

appropriate.

For the foregoing reasons, we affirm the judgment on the rationale set forth by the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix B: 1

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

RODERICK L. CUTRIGHT Plaintiff, v. E.R. CARPENTER COMPANY, INC. Defendant.	)	CA No. 3:91CV00275

ORDER

This matter came before the court on November 7, 1991 on defendant's motion to strike plaintiff's jury demand. For the reasons stated from the bench, defendant's motion is GRANTED.

Additionally, the trial has been changed from 10:00 on November 20, 1991 to 9:30 on November 20, 1991.

And it is SO ORDERED.

s/ James R. Spencer
UNITED STATES DISTRICT JUDGE

Date: 7 NOV 1991